



California Fair Political Practices Commission

March 27, 1992

Katherine E. Stone
FREILICH, STONE, LEITNER & CARLISLE
The Wilshire Landmark, Suite 1230
11755 Wilshire Boulevard
Los Angeles, CA 90025-1518

Re: Your Request for Advice
Our File No. I-92-133

Dear Ms. Stone:

This letter is in response to your request for advice regarding the duties and responsibilities of the mayor, seven councilmembers and other officials of the City of Riverside under the conflict-of-interest provisions of the Political Reform Act (The "Act").¹ Although you have requested formal advice, pursuant to the provisions of Regulation 18329 we are treating this letter as a request for general guidance because of the general nature of the facts provided.² In addition, our advice is prospective in nature and we make no comments regarding past conduct.

QUESTIONS

1. Do the conflict-of-interest provisions of the Act require the mayor and the seven councilmembers to disqualify themselves from participating in decisions to adopt a revised general plan because of their financial interests in real property located in the City of Riverside?

2. Do the conflict-of-interest provisions of the Act preclude the mayor or any or all councilmembers from participating

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c).)

in the preliminary decisions concerning the contents of the general plan such as:

- a. Inclusion, exclusion or modification of particular goals, policies and objectives;
- b. Inclusion, exclusion or changes in the location of proposed roadways;
- c. Modifications to land use categories;
- d. Changes in the boundaries of land use categories;
- e. Changes in the boundaries of other maps or diagrams;
- f. Changes to the draft general plan recommended by the planning commission;
- g. Changes to the draft general plan requested by members of the public;
- h. Changes in the draft general plan requested by staff; and
- i. Changes in the draft general plan requested by the mayor or other councilmembers.

3. Under the conflict-of-interest provisions of the Act, does ownership of a home similar to other homes in the area preclude an official from participating in the decision to adopt the general plan or in any of the preliminary decisions described in question No. 2?

4. Under the conflict-of-interest provisions of the Act, does ownership of a small citrus ranch similar to other small citrus ranches in the greenbelt area of the City of Riverside preclude an official from participating in the decision to adopt the general plan or in any of the preliminary decisions described in question No. 2?

5. Under the conflict-of-interest provisions of the Act, does ownership of rental properties similar to other rental properties in the area preclude an official from participating in the decision to adopt the general plan or any of the preliminary decisions described in question No. 2?

6. If the conflict-of-interest provisions of the Act require the mayor and the councilmembers to disqualify themselves from participating in decisions regarding the general plan, would the same conclusion apply to other city officials such as the city attorney, city manager and planning director who are involved in the general plan revision and who may have financial interests in real property in the city?

CONCLUSIONS

1-6. The conflict-of-interest provisions of the Act require public officials to disqualify themselves from participating in governmental decisions which will have a material financial effect on their economic interests unless the effect of the decisions on such economic interests is not distinguishable from the effect of the decisions on the public generally, as discussed below.

FACTS

The City of Riverside is in the process of revising its entire general plan pursuant to Section 65300, et seq. This general plan revision will not alter the housing element which was recently revised pursuant to Section 65588. Consultants and city staff prepared a draft plan and an environmental impact report ("EIR"). These documents were circulated for public review and were reviewed by the city's planning and environmental protection commissions at public hearings. The planning commission recommended that the city council adopt the plan with certain modifications. You have submitted for our consideration planning commission resolution 4058 and a document entitled "Planning Commission Recommended Changes to the Draft Riverside General Plan 2010" dated January 24, 1992.

Public hearings before the city council on the plan are scheduled to begin March 3, 1992, and are expected to last about two months.

The draft plan covers the entire city and a portion of the city's sphere of influence. It will be adopted by resolution pursuant to Section 65356. The plan consists of all the mandatory elements and some optional elements which are combined into four sections. As required by statute, the plan consists of a text containing goals, policies and objectives, demographics and other statistical data, a land use diagram which designates land use categories as No. 1 (the lowest density/intensity of use) through No. 18 (the highest density/intensity of use) plus additional land use categories Nos. 19-25 (for non-urbanized uses and mixed uses). The plan also contains a streets and highways diagram showing the existing and proposed roadways. Other maps and diagrams include alternative scenarios, public facility locations, sensitive plant and animal species, agricultural resources, noise contours, area maps, wastewater and water service areas, historic sites, vegetation and wildlife resources, seismic hazards, unsuitable soil conditions, hydrology, slope analysis, sphere of influence, specific plan/community plan areas, proposed trail system, parks and open space, and mineral resources. The plan also contains a section of proposed implementation measures for future consideration.

You state that your request for advice arises from charges by owners of property subject to two initiative measures³ that the participation of Mayor Frizzel and Councilmember Buster, who supported the initiative, in certain land use and litigation decisions would be a conflict of interest. These landowners have sued the city in state and federal court. The mayor, the councilmembers, the city attorney and the planning director were sued in their personal capacity as well. The litigation is an effort to invalidate the initiative. You also state that some of these landowners are threatening additional litigation over the revised general plan once it is adopted. So far the city has prevailed in all the litigation and the courts have held the initiative measures valid and binding on the city. Consequently, the zoning on the property subject to the initiatives cannot be changed without a vote of the people.

You further state that one litigation tactic of the landowners was an attack on the city's general plan. In Gerald Garat, et al. vs. City of Riverside, et al., 92 Daily Journal D.A.R. 173, the trial court held the city's plan inadequate, ordered the city to revise it, and invalidated Measures R and C on a "consistency" theory. The Court of Appeal reversed and held that the city's zoning is not required to be consistent with its general plan. Accordingly, regardless of the land use designation in the general plan for the greenbelt, hillsides and La Sierra lands, Measure R zoning controls and the general plan policies contained in Measure C are binding on the city council. The city does not have the discretion to modify Measure R or Measure C land use designations or policies.

All of the councilmembers own homes and/or other property interests in the city. Councilmember Buster owns a total of about 9.9 acres designated agricultural and rural residential.⁴ The mayor owns her own house located on approximately 2.18 acres designated medium density residential (category 7). The mayor also owns several other residential properties in the city within categories 7 and 9. You state that, in your opinion, none of these economic interests are unique, dominate the field or will be materially affected by the general plan revision in a manner distinguishable from the public generally. You also state that the proposed general plan revision does not affect any of the

³ Measure R, adopted in 1979, rezoned the greenbelt and La Sierra lands RA 1 unit/5 acres shown as (1) on the land use diagram, and hillsides RC 1 unit/2 acres or 1 unit/5 acres depending on slope shown as (2) on the planning commission recommended land use diagram. Measure C, adopted in 1987, reinforced Measure R and directed the city to prepare a specific plan for the La Sierra lands.

⁴ Our previous advice regarding Councilmember Buster was premised on the facts provided which stated that the councilmember owned a 5-acre ranch.

public officials in a unique manner with the possible exception of a proposed road extension near Councilmember Buster's property.

Riverside's seven councilmembers are elected by "ward" (district). Each ward has roughly equal population density. You have enclosed for our review a map showing the present boundaries of the wards and the residences and other property owned by the mayor and the councilmembers. The mayor is elected at large. Councilmember Buster's ward 4 includes a large amount of greenbelt lands (land use category 1) and Councilmember Alex Clifford's ward 5 also contains a substantial amount of land in that category. The La Sierra lands are in Councilmember Laura Pearson's ward 7 where the mayor also resides. Wards 7 and 4 contain substantial amounts of hillside properties (land use category 2).

The economic interests in real property of the councilmembers can be generally described as ownership of homes and rentals. Councilmember Buster owns a small citrus ranch. You state that none of the councilmembers owns a relatively large portion of the land in any particular land use category. You have provided us with copies of the Statements of Economic Interests filed by these public officials.

On March 9, 1992, you faxed to us a copy of a letter from Mr. C. D. Porterfield, an appraiser, addressed to you. Mr. Porterfield states in this letter that, in response to your inquiry, he has reviewed the general plan designations for fifteen properties in which either a City of Riverside Councilmember or the Mayor have an ownership interest. Based upon his review, Mr. Porterfield has concluded as follows:

1. It is conceivable that the mere adoption of a general plan could affect the value of the mayor's and/or councilmembers' property interests in a manner distinguishable from other owners of similarly situated properties. However, the current draft does not appear to favor or single out any particular property or properties, including the fifteen delineated on the map which you provided me. Although a general plan may influence a planning commission and city council consideration requested zone changes, in the City of Riverside, the zoning in the greenbelt, hillside and La Sierra lands cannot be unilaterally changes (sic) by the City Council. It requires a vote of the electorate.

2. As currently proposed, it is not likely that the value of the real property of the Mayor and/or Councilmember (sic) will be materially affected by:

- a. the inclusion, exclusion or modification of particular goals, policies and objectives;
- b. the inclusion, exclusion or change in the location of proposed roadways. Although there is some public concern that the extension of Overlook Parkway will result in the diminution the value of "Greenbelt" properties, the claim is based more on emotions than on market conditions.
- c. modification of land use categories;
- d. changes in the boundaries of land use categories;
- e. changes in the boundaries of other maps or diagrams.

The current draft of the General Plan varies only slightly from the previous General Plan. I found no apparent spot or pocket redesignation that would single out any of the Councilmembers' and/or Mayor's properties over those of other similarly situated properties.

ANALYSIS

In your request for advice you have cited a number of cases that have interpreted other provisions of law. None of these cases interprets the Political Reform Act. The provisions of the Act are interpreted to effectuate the intent of the voters in adopting the Act. Sections 81001 and 81002 provide guidance in interpreting the provisions of the Act. In pertinent part, Section 81001 states:

The people find and declare as follows:

- (a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;
- (b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;

Section 81001(a) and (b). (Emphasis added.)

In addition, Section 81002 provides:

The people enact this title to accomplish the following purposes:

(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

(f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.

Section 81002(c) and (f). (Emphasis added.)

In furtherance of the provisions of the Act, the Commission has consistently advised that public officials must disqualify themselves from participating in governmental decisions which will have a material financial effect, distinguishable from the effect on the public generally, on the economic interests of the public officials. (Sections 87100 and 87103.)

We have applied our conflict-of-interest analysis to the amendment of the general plan of the City of Riverside three times in the past 12 months. Our Advice Letter No. A-90-768, addressed to City Attorney John Woodhead, applied the provisions of the Act to Mayor Frizzel and her participation in decisions regarding the Rancho La Sierra specific plan. Our Advice Letter No. I-91-266, addressed to City Attorney John Woodhead, applied the conflict-of-interest provisions of the Act to the economic interests of Councilmember Robert A. Buster. As stated in that request for advice, Councilmember Buster's economic interests included not only an interest in five acres of land in the greenbelt but also an interest in a family trust and an interest in a business entity located in the greenbelt. At your request, we re-examined our advice in these two letters and once again discussed the applicability of the conflict-of-interest provisions of the Act with regards to Mayor Frizzel and Councilmember Buster in our Advice Letter No. I-91-564. We now reiterate once again the advice previously provided. Public officials whose economic interests will be affected materially by a governmental decision must disqualify themselves from participating in the decision unless the effect of the decision on their economic interests will not be distinguishable from the effect of the decision on the public generally.

You have submitted for our consideration a letter from Mr. C. D. Porterfield, a real property appraiser. The letter does not offer any information regarding land values and how they will be affected by the proposed revision of the general plan. Rather, this letter reaches conclusions of law and seems to apply very broadly the provisions of the Act without substantiating its conclusions. For example, Mr. Porterfield states that it is not likely that the real property of the mayor or the councilmembers

will be materially affected. There is no clarification or information that would assist us in determining how Mr. Porterfield has reached this conclusion.

We have previously advised that a public official must make a reasonable, good faith effort to determine the financial effect of a decision on the fair market value of his interests in real property. (Green Advice Letter, No. A-90-075.) Any such determination must include consideration of the following factors:

(1) The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest;

(2) Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property;

(3) In addition to the foregoing, in the case of residential property, whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, effects on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

Regulation 18702.3(d)(1) - (3).

Mr. Porterfield's letter does not indicate that these factors have been taken into consideration. Rather, his letter is a comparison of the general plan and the draft of the new general plan. Based on these comparisons, Mr. Porterfield concludes that "(i)t is conceivable that the mere adoption of a general plan could affect the value of the Mayor's and/or Councilmembers' property interests in a manner distinguishable from other owners of similarly situated properties."⁵ Even assuming that the general plan will not change the land designation of any of the properties in which the mayor and the councilmembers have an economic interest, decisions regarding other components of the plan, such as the traffic element, may have an effect on these properties. Materiality is a question of law which must be assessed under the standards provided in the regulations we have discussed in our previous advice regarding this matter. If a governmental decision will affect a public official's economic interest materially, disqualification is required unless the "public generally" exception applies. Mr. Porterfield has failed to apply these standards and it does not appear that he has taken into consideration the factors set forth in Regulation 18702.3(d).

⁵ Letter from C. D. Porterfield to Katherine E. Stone dated March 9, 1991. (Emphasis added.)

Consequently, his letter is insufficient for a determination of materiality.

You have included in your request for advice a "suggested conclusion" which states that the revision of the general plan, when adopted, will relate to all of the property within the city and therefore will not affect the councilmembers in any manner different than the public generally. As we have previously advised you and Mr. Woodhead, the "public generally" exception is governed by certain standards developed by the Commission to effectuate the intent of the Act. The standard is not whether adoption of the general plan will affect all property within the city but rather whether the financial interests of the public officials making decisions regarding the general plan will be affected in a manner which is not distinguishable from the effect of the decisions on similar interests of a substantial segment of the population of the jurisdiction. For example, you have stated in your request for advice that Mr. Buster owns 9.9 acres designated agricultural and rural residential. You have not provided information that would suggest that a significant segment of the population of the city owns 9.9-acre parcels in a similar land designation which will be affected in a manner which is substantially similar to the effect of the pending decisions on Mr. Buster's land.

You have also stated that the mayor's home is located on approximately 2.18 acres designated medium density residential, and that the mayor also owns several other residential properties in the city within categories 7 and 9. To apply the "public generally" exception to these economic interests of the mayor we would have to compare her land holdings to those of a significant segment of the population of the city. We have no information that would suggest that a significant segment of the public owns parcels of 2.18 acres and also owns other residential property within the city. Accordingly, the "public generally" exception is inapplicable to Mayor Frizell and Councilmember Buster.

You further state that the mayor, every member of the council, and each member of the city planning commission as well as all other officials who have duties involved in the adoption of the general plan reside within the city. They either own or have an interest in other properties. You conclude that it does not seem logical to presume that the Political Reform Act precludes them from recommending or voting upon a general plan which does not change the permitted use of such properties.

As we have previously advised you, if a governmental decision will not have a material financial effect on an official's economic interest, disqualification is not required. Accordingly, if you determine that the general plan will not change the permitted use of such properties and that other components of the plan such as the traffic element will not have a material financial effect on such properties, disqualification would not be required. However, each economic interest must be analyzed

individually to determine the effect of the decision on the particular interest. We have insufficient information regarding the interests of all these other officials to make a determination.

As stated above, the Act does not preclude a public official from participating in decisions which will have no effect on the public official's economic interests. However, decisions regarding the general plan are not limited to the uses of the property. The general plan includes elements such as traffic and noise which may affect the value of real property even when the zoning designation for the property will not be altered. For example, a road that runs through the greenbelt where Councilmember Buster's ranch is located may increase or decrease the value of the councilmember's land. If the effect of any decision regarding the road will have a material financial effect on the councilmember's land, his disqualification is required unless the "public generally" exception applies, as discussed in further detail below.

Public Generally

At page 10 of your request for advice you state that there is obviously some benefit to the general public from a well-planned city. Each of the mandatory elements of the plan is designed to promote a public purpose such as good traffic circulation, a balanced community, adequate housing, open space, public safety, conservation of natural resources, and the like. This may be so. However, as we have previously advised you, for purposes of the Act, disqualification is required when a particular decision will affect a public official's economic interest in a manner which is distinguishable from the effect of the decision on the economic interests of other members of the public. (Regulation 18703.) For example, a decision to dedicate a 5-acre parcel to create an urban park with waterfalls, swimming pools, and other environmentally pleasing attractions, will enhance the value of property in close vicinity to the park. Although all the residents of the community and, as a matter of fact, residents of other communities as well, will benefit from having access to the park, the value of real property situated more distantly from the park will not be enhanced in the same manner as the value of property situated closer to the park. Thus, the "public generally" exception would not apply to allow the participation of an official who owns land near the proposed park if decisions regarding the park would have a material financial effect on the official's land.

Similarly, when comparing the interests of a public official who owns a shopping mall with those of the general public, we would not apply the "public generally" exception on the grounds that the general public will benefit from an improvement to the mall. Rather, we would focus on the effect of governmental decisions regarding the mall on the economic interests of the public official, such as the value of the land and the development

potential of the business. It would be inconsistent with the provisions of the Act to suggest that the official who owns the shopping center is affected in the same manner as a significant segment of the public simply because the general public will have access to an improved shopping mall.

The courts have upheld the Commission's interpretation of the provisions of the Act and have acted to set aside decisions tainted by conflicts of interest. For example, in Downey Cares vs. Downey Community Development Com. (1987) 196 Cal.App. 3d 983, the court found that the ordinance amending the city's redevelopment plan must be set aside because a disqualified public official had participated in the vote adopting the ordinance. The court found that adoption of the ordinance was reasonably foreseeable to materially affect the councilmember's financial interest as a realtor. Not only did he own a valuable property in the amended area which was the site of his real estate business, and owned parcels of real property in the original redevelopment area, but also several of his properties were specifically mentioned in reports as possible areas for specific projects. Thus, the councilmember was barred from voting on the ordinance due to a conflict of interest under the Act. Specifically, the court stated:

Appellants contend that, as a matter of law, the adoption of the ordinance amending the redevelopment plan could not have had a material financial effect on Mr. Santangelo's property and business. They contend that because the plan at this stage does not specify or authorize expenditures for any particular projects of (sic) improvement, it is not reasonably foreseeable that any particular business or real properties, such as Santangelo's, will be materially affected by the adoption of the redevelopment plan. Conceding that Mr. Santangelo may well be barred from future votes on specific ways to "implement" the plan, they contend he was not barred from voting to "adopt" the plan. We find appellants' argument unpersuasive. It is based on an improperly narrow interpretation of the Political Reform Act and the redevelopment law.

Downey, supra, at 990 (Emphasis added.)

Similarly, although adoption of the general plan will not authorize expenditures for any particular project or improvements, the plan will set goals, objectives and policies for future development. Property values and other economic interests may be affected by the adoption of these guidelines and policies. In addition, the general plan contains implementation directives which are the specific means or actions for implementing the goals, objectives and policies. If a public official's economic interest will be materially affected by any of these decisions,

disqualification may be required. However, in the absence of an economic interest which will be materially affected by decisions regarding adoption of a general plan or any of its components, disqualification is not required.

You have posed several questions for our consideration. You ask whether the mayor and councilmembers are precluded from participating in decisions concerning inclusion, exclusion or modification of particular goals, policies and objectives. It does not appear that these types of decisions would have a reasonably foreseeable financial effect on the economic interests of the public officials which is distinguishable from the effect on the public generally because these types of decisions affect the total population of the city by providing a general framework for the development of the plan. However, if it is reasonably foreseeable that a particular goal, policy or objective will have a material financial effect on an official's economic interests, disqualification would be required.

Conversely, items such as the inclusion, exclusion or changes in the location of proposed roadways and modifications to land use categories, changes in the boundaries of land use categories, changes in the boundaries of other maps or diagrams, and changes to the draft general plan recommended by the planning commission may result in a peculiar effect on a public official's economic interests which is distinguishable from the effect on the public generally. Disqualification would thus be required. Regardless of who requests changes to the draft general plan, disqualification would also be required if the proposed change will have a material financial effect on an official's economic interests which is distinguishable from the effect of the decision on the public generally.

As you have stated in your request for advice, there is some benefit to the general public from a well-planned city. However, public officials who have economic interests in the city are precluded from participating in decisions regarding the adoption of a city-wide general plan amendment or any of its components, such as the housing element, whenever the proposals submitted for consideration of the city council include items which will have a material financial effect on the economic interests of the councilmembers. As discussed in previous letters regarding the general plan amendment in the City of Riverside, decisions which will have a material financial effect on a councilmember's financial interests must be segregated and acted upon first. Once a final decision has been reached by the city council without the participation of the disqualified member, the councilmember who was previously disqualified from participating in the decision may participate in the deliberations and vote regarding other areas of the general plan so long as those deliberations and vote do not affect the previous decision from which he or she was disqualified. (Merkuloff Advice Letter, No. I-90-542; Woodhead Advice Letter, No. I-91-266.)

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.⁶

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

SH:BMB:bb

⁶ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.